

RULES BY DISTRICT COURTS

57.I.1: *Roll of Attorneys.* The Bar of this Court consists of those attorneys heretofore admitted and those attorneys hereafter admitted as prescribed by Local Civil Rule 83 and Local Criminal Rule 57.

57.I.2: *Eligibility.* A member in good standing of the Bar of the Supreme Court of South Carolina is eligible for admission to the Bar of this Court.

57.I.3: *Procedure for Admission.* Before being presented to the District Court for taking the required oath, an applicant for admission shall certify in a written application that such applicant:

- (A) Is a member in good standing of the Bar of the Supreme Court of South Carolina;
- (B) Has studied the Federal Rules of Civil and Criminal Procedure, the Federal Rules of Evidence, the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules), and the Local Civil and Criminal Rules of the Court; and
- (C) Has completed the required trial experiences listed in Rule 403 of the South Carolina Appellate Court Rules for the examination and admission of persons to practice in South Carolina.

In addition to these certifications, the written application shall contain the certification of two attorneys who are members in good standing of the Bar of this Court that, to the best of their knowledge, information, and belief, the applicant is of good moral character and professional reputation and meets the requirements for admission.

The applicant shall file the application, accompanied by a fee of one hundred dollars (\$100), with the Clerk of this District Court. If the application is in order and upon approval of the Court, the Clerk shall then issue to the applicant a certificate of admission to the Bar of this Court.

57.I.4: *Representation by Local Counsel Who Must Sign All Pleadings.* Litigants in civil and criminal actions, except for parties appearing *pro se*, must be represented by at least one member of the Bar of this Court who shall sign each pleading, motion, discovery procedure or other document served or filed in this Court. The attorney identification number is also required on each pleading, motion, discovery procedure or other document served or filed in this Court.

57.I.5: *Appearances by Attorneys Not Admitted in the District.* Upon motion, any person who is a member in good standing of the bar of a United States District Court and the

bar of the highest court of any State or the District of Columbia may be permitted to appear in a particular matter in association with a member of the Bar of this Court. A motion seeking admission under this Rule shall set forth the movant's qualifications for admission and the movant's agreement to abide by the ethical standards governing the practice of law in this Court pursuant to Local Civil Rule 83.I.08 and Local Criminal Rule 57.I.8. The motion shall be accompanied by an application fee of \$75. The appearance of such a person in a particular action(s) shall confer jurisdiction upon this Court for any alleged misconduct of that person in all matters related to that action(s). The Court may revoke admission under this Rule at its discretion.

57.I.6: *Pleadings, Service, and Attendance by Local Counsel in Cases Where Out-of-State Attorneys Appear.* Pleadings and other documents filed in a case where an attorney appears who is not admitted to the Bar of this Court shall contain the individual name, firm name, address, and phone number of both the attorney making a special appearance under this Local Criminal Rule and the associated local counsel. In such a case, the service of all pleadings and notices as required shall be sufficient if served only upon the associated local counsel. Unless excused by the Court, the associated local counsel shall be present at all pretrial conferences, hearings and trials, and may attend discovery proceedings. Local counsel is expected to be prepared to actively participate if necessary.

57.I.7: *Withdrawal of Appearance.* No attorney whose appearance has been entered shall withdraw his or her appearance or have it stricken from the record except with leave of the Court.

57.I.8: *Federal Rules of Disciplinary Enforcement ("FRDE").* All counsel admitted to practice before this Court or admitted for the purpose of a particular proceeding (pro hac vice) shall be admitted subject to the following rules, conditions and provisions.

FRDE RULE I. ATTORNEYS CONVICTED OF CRIMES

- (A) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any Court of the United States, or the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as hereinafter defined, the Court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the Court may set aside such order when it appears that the interests of justice require the same.
- (B) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law

definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of any other to commit a "serious crime."

- (C) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based, in whole or in part, upon the conviction.
- (D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall, in addition to suspending that attorney in accordance with the provisions of this Rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the Court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.
- (E) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the Court; provided, however, that the Court may in its discretion make no references with respect to convictions for minor offenses.
- (F) An attorney suspended under the provisions of this Rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the Court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

FRDE RULE II. DISCIPLINE IMPOSED BY OTHER COURTS

- (A) Any attorney admitted to practice before this Court shall, upon being subjected to public discipline by any other court of the United States or the District of Columbia, or by a Court of any state, territory, commonwealth or possession of the United States, inform the Clerk of this Court in writing within ten (10) days of such action.
- (B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been

disciplined by another Court, this Court shall forthwith issue a notice directed to the attorney containing:

- (1) A copy of the judgment or order from the other Court; and
 - (2) An order to show cause directing that the attorney inform this Court within 30 days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in (D) hereof that the imposition of the identical discipline by the Court would be unwarranted and the reasons therefor.
- (C) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court shall be deferred until such stay expires.
- (D) Upon the expiration of 30 days from service of the notice issued pursuant to the provisions of (B) above, this Court shall impose the identical discipline unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:
- (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (2) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
 - (3) That the imposition of the same discipline by this Court would result in grave injustice; or
 - (4) That the misconduct established is deemed by this Court to warrant substantially different discipline. Where this Court determines that any of said elements exist, it shall enter such other order as it deems appropriate.
- (E) In all other respects, a final adjudication in another Court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.
- (F) This Court may at any stage appoint counsel to prosecute the disciplinary proceedings.

FRDE RULE III. DISBARMENT ON CONSENT OR RESIGNATION IN OTHER COURTS

- (A) Any attorney admitted to practice before this Court who shall be disbarred on consent or resign from the bar of any other Court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this Court and be stricken from the roll of attorneys admitted to practice before this Court.
- (B) Any attorney admitted to practice before this Court shall, upon being disbarred on consent or resigning from the bar of any other Court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the Clerk of this Court of such disbarment on consent or resignation.

FRDE RULE IV. STANDARDS FOR PROFESSIONAL CONDUCT

- (A) For misconduct defined in these Rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be disbarred, suspended from practice before this Court for a definite time, fined, and/or reprimanded, either publicly or privately, or subjected to other disciplinary action as the circumstances may warrant.
- (B) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate the Code of Professional Responsibility adopted by this Court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. The Code of Professional Responsibility adopted by this Court is the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules) adopted by the Supreme Court of the State of South Carolina, as amended from time to time by that state Court, except as otherwise provided by specific Rule of this Court.

FRDE RULE V. DISCIPLINARY PROCEEDINGS

- (A) When misconduct or allegations of misconduct which, as substantiated, would warrant discipline on the part of an attorney admitted to practice before this Court shall come to the attention of a judge of this Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules, that judge shall petition the Chief Judge to (1) refer the matter to the

appropriate state disciplinary authority for investigation or prosecution, or (2) refer the matter to the United States Attorney or, if the United States Attorney has a conflict of interest, to other selected counsel for investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate. Should the Chief Judge be disqualified, the most senior active Judge shall have the responsibility of enforcing this section. Should the matter be referred to a state disciplinary authority, or should there be a parallel state disciplinary proceeding, the Chief Judge may provide to such authority information and documents pertinent to the investigation, subject to the requirements of Rule 6(e), Federal Rules of Criminal Procedure, and an appropriate protective order.

- (B) Counsel appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, as well as the respondent-attorney, shall have the authority to issue subpoenas pursuant to Rule 17, Federal Rules of Criminal Procedure.
- (C) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons for such recommendation.
- (D) To initiate formal disciplinary proceedings, counsel shall obtain an order of this Court, upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally, or by mail, why the attorney should not be disciplined. The respondent-attorney shall have the right to be represented by counsel in these proceedings.
- (E) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the Chief Judge shall set the matter for prompt hearing before a panel of three judges of this Court, provided however that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court the complaining Judge shall not serve on the panel.
- (F) The senior Judge of the three-judge panel, within a reasonable time following the hearing, shall provide to the District Court a written report which shall include a recommendation as well as a transcript of the hearing and all pleadings and evidence.

- (G) After receiving the report the District Court, sitting *en banc*, shall by written order make a final determination.
- (H) Misconduct Defined: Misconduct, as the term is used herein, means any one or more of the following:
 - (1) Violation of any provision of the oath of office taken upon admission to practice of law;
 - (2) Violation of any provision of the South Carolina Rules of Professional Conduct as adopted by this Court;
 - (3) Commission of a crime involving moral turpitude;
 - (4) Conduct tending to pollute or obstruct the administration of justice or to bring the courts or the legal profession into disrepute;
 - (5) Conduct demonstrating a lack of professional competence in the practice of law;
 - (6) Conduct tending to obstruct the Court's disciplinary investigation;
 - (7) Conduct constituting a serious crime as defined in FRDE Rule 1(B);
 - (8) Conduct violating applicable rules of professional conduct of another jurisdiction.

FRDE RULE VI. DISBARMENT ON CONSENT WHILE UNDER DISCIPLINARY INVESTIGATION OR PROSECUTION

- (A) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:
 - (1) The attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;
 - (2) The attorney is aware that there is a presently pending investigation or proceeding involving allegations that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;
 - (3) The attorney acknowledges that the material facts so alleged are true; and
 - (4) The attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself or herself.
- (B) Upon receipt of the required affidavit, this Court shall enter an order disbarring the attorney.
- (C) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be

publicly disclosed or made available for use in any other proceeding except upon order of this Court.

FRDE RULE VII. REINSTATEMENT

- (A) After Disbarment or Suspension. An attorney suspended or disbarred may not resume practice until reinstated by order of this Court.
- (B) Time of Application Following Disbarment. A person who has been disbarred after hearing or by consent may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment.
- (C) Hearing on Application. Petitions for reinstatement by a disbarred or suspended attorney under this Rule shall be filed with the Chief Judge of this Court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before a three-judge panel of this Court, provided however that if the disciplinary proceeding was predicated upon the complaint of a judge of this Court the complaining Judge shall not serve on the panel. The judges assigned to the matter shall promptly after referral schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest. The senior Judge of the three-judge panel, within a reasonable time following the hearing, shall provide to the District Court a written report which shall include a recommendation pursuant to subparagraph F of this section. After receiving the report the District Court, sitting *en banc*, shall by written order make a final determination and enter judgment pursuant to subparagraph F of this section.
- (D) Duty of Counsel. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.
- (E) Deposit for Costs of Proceeding. Petitions for reinstatement under this Rule shall be accompanied by an advance cost deposit in an amount to be set from time to time by the Court to cover anticipated costs of the reinstatement proceeding.
- (F) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the

judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the petitioner whose conduct led to the suspension or disbarment. The court may impose any conditions of reinstatement that are reasonably related to the grounds for the lawyer's original suspension or disbarment, or to evidence presented at the hearing regarding the lawyer's failure to meet the criteria for reinstatement. Provided further, that if the petitioner has been suspended or disbarred for five years or more, reinstatement may be conditioned, in the discretion of the District Court, upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

- (G) Successive Petitions. No petition for reinstatement under this Rule shall be filed within one year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

FRDE RULE VIII. SERVICE OF PAPERS AND OTHER NOTICES

Service of an order to show cause instituting a formal disciplinary proceeding shall be made by personal service or by registered or certified mail addressed to the respondent-attorney at the last address of record with the Clerk of this Court. Service of any other papers or notices required by these Rules shall be deemed to have been made if such paper or notice is addressed to the respondent-attorney at the last address of record with the Clerk of this Court; or to counsel or the respondent's attorney at the address indicated in the most recent pleading or other document filed by them in the course of any proceeding.

FRDE RULE IX. APPOINTMENT OF COUNSEL

Whenever counsel other than the United States Attorney is to be appointed pursuant to these Rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition, this Court shall appoint as counsel one or more members of the Bar of this Court. The respondent-attorney may move to disqualify the United States Attorney or any other attorney so appointed on grounds of conflict of interest. Any motion for disqualification shall be determined by the Chief Judge or, should the Chief Judge be disqualified, the most senior active Judge. Counsel, once appointed, may not resign unless permission to do so is given by this Court.

FRDE RULE X. DUTIES OF THE CLERK

- (A) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime, the Clerk of this Court shall determine whether the Clerk of the Court in which such conviction occurred has forwarded a certificate of such conviction to this Court. If a certificate has not been so forwarded, the Clerk of this Court shall promptly obtain a certificate and file it with this Court.
- (B) Upon being informed that an attorney admitted to practice before this Court has been subjected to discipline by another Court, the Clerk of this Court shall determine whether a certified or exemplified copy of the disciplinary judgment or order has been filed with this Court, and, if not, the Clerk shall promptly obtain a certified copy or exemplified copy of the disciplinary judgment or order and file it with this Court.
- (C) Whenever it appears that any person convicted of any crime or disbarred or suspended or censured or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other Court, the Clerk of this Court shall, within ten days of that conviction, disbarment, suspension, censure, or disbarment on consent, transmit to the disciplinary authority in such other jurisdiction, or for such other Court, a certificate of the conviction or a certified or exemplified copy of the judgment or order of disbarment, suspension, censure, or disbarment on consent, as well as the last known office and residence addresses of the defendant or respondent.
- (D) The Clerk of this Court shall, likewise, promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

FRDE RULE XI. JURISDICTION

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, including, but not limited to, the power to impose sanctions and to institute proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

FRDE RULE XII. EFFECTIVE DATE

Any amendments to these disciplinary enforcement rules shall become effective immediately upon the entry and filing of any Order, provided that any formal disciplinary proceedings then pending before this Court shall be concluded under the procedure existing prior to the effective date of these amendments.

57.I.9: *Student Practice.*

- (A) Upon the approval of the Judge to whom the case is assigned, an eligible law student with the written consent of an indigent and his attorney of record may appear in this Court on behalf of that indigent in any case. Upon the written consent of the United States Attorney or his authorized representative and the consent of the presiding Judge, an eligible law student may also appear in this Court on behalf of the United States. Upon the written consent of the South Carolina Attorney General or his authorized representative and the consent of the presiding Judge, an eligible law student may also appear in this Court on behalf of the State of South Carolina. In each case, the written consent shall be filed with the Clerk of this Court.
- (B) An eligible law student may assist in the preparation of pleadings, briefs and other documents to be filed in this Court, but such pleadings, briefs or other documents must be signed by the attorney of record. He may also participate in court proceedings with leave of the Court, but only in the presence of the attorney of record. The attorney of record shall assume personal professional responsibility for the law student's work and for supervising the quality of his work. He should be familiar with the case and prepared to supplement or correct any written or oral statement made by the student.
- (C) In order to make an appearance pursuant to this Rule, the law student must:
 - (1) Be duly enrolled in a law school approved by the American Bar Association;
 - (2) Have completed legal studies amounting to at least four (4) semesters, or the equivalent if the school is on some basis other than a semester basis, be enrolled in a clinical law course, and appear only as a requirement of that course;
 - (3) Be certified by the Dean of his law school as being of good character and competent legal ability, which certification shall be filed with the Clerk and may be withdrawn by the Dean at any time by mailing notice to the Clerk;
 - (4) Be introduced to the Court by an attorney admitted to practice before this Court;
 - (5) Neither ask for nor receive any compensation or remuneration of any kind for his services from the person on whose behalf he renders services, but this shall not prevent an attorney, legal aid bureau, law

school, public defender agency, a State, or the United States from making such charges for its services as it may otherwise properly require;

- (6) Certify in writing that he has read and is familiar with the South Carolina Rules of Professional Conduct.

57.II.1: *Fair Trial Directives: Court Personnel.*

- (A) All Court supporting personnel, including but not limited to, marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, bailiffs, court reporters and employees or subcontractors retained by the Court or the Marshal, and the Judges' office personnel, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the Court. Further, all such personnel are forbidden to divulge any information concerning grand jury proceedings, *in camera* arguments, and hearings held in chambers or otherwise outside the presence of the public.
- (B) All Court supporting personnel, including but not limited to, marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, bailiffs, court reporters and employees or subcontractors retained by the Court or the Marshal, and the Judges' office personnel, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending civil case that is not a part of the public record of the Court which has been filed and served on the parties to the proceeding. Further, all such personnel are forbidden to divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public or in the case of jury trials outside the presence of the jury.

57.II.2: *Fair Trial Directives: Attorneys.*

- (A) It is the duty of any lawyer or law firm not to release or authorize the release of information or opinions, which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which any lawyer or law firm is associated if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, any lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person

would expect to be disseminated by any means of public communication that goes beyond the public record or that is not necessary (1) to inform the public that the investigation is underway, (2) to describe the general scope of the investigation, (3) to obtain assistance in the apprehension of a suspect, (4) to warn the public of any dangers, or (5) to aid in the investigation.

From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, any lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:

- (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status; if the accused has not been apprehended, any lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;
- (2) The existence or contents of any confession, admission, or statement given by the accused or the refusal or failure of the accused to make any statement;
- (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
- (4) The identity, testimony, or credibility of prospective witnesses, except that any lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
- (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
- (6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude any lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency,

and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by any means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that any lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, any lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

- (B) Except to the extent necessary to prepare a case, all lawyers are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending civil case that is not a part of the public record of the Court which has been filed and served on the parties to the proceeding. Further, all such persons are forbidden to divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public or in the case of jury trials outside the presence of the jury.

57.II.3: *Fair Trial Directives: Copies of Public Records.* The members of the news media and others may obtain copies of all public records from the Clerk upon payment of copying fees.

57.II.4: *Fair Trial Directives: Conduct of Judicial Proceedings.* In any case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the parties to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.

57.II.5: *Fair Trial Directives: Photographing and Reproducing Court Proceedings.* The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs, during the progress of or in connection with judicial proceedings, whether or not court is actually in session, is prohibited. The Court may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording or photographing of investitive, ceremonial or naturalization proceedings.

57.III.01: *Opening Statement.* Counsel for any party may summarize his pleadings to the jury or make a statement to the jury of the ultimate facts alleged in the pleadings and the theory of his case; but counsel shall not argue his case during his opening statement. The pleadings shall not be submitted to the jury for its deliberations.

57.IV.01: *Petition for Attorney's Fees.* Except as otherwise provided by statute or ordered by the Court, a motion for attorney's fees claimed by a prevailing party must be filed with the Clerk within thirty (30) days of the entry of the final judgment in the District Court or from the date of affirmance of the judgment on appeal. A copy of the petition shall also be served on the opposing party. Noncompliance with this time limit shall be deemed a waiver of any claim for attorney's fees.

The petition for attorney's fees shall comply with the requirements set forth in *Barber v. Kimbrell, Inc.*, 577 F.2d 216 (4th Cir. 1978), and shall state any exceptional circumstances and the ability of the party to pay the fee. Where appropriate, a memorandum in opposition to a petition for attorney's fees must be filed with the Clerk within fifteen (15) days of the filing of the petition. (For Social Security cases, see Local Civil Rule 9.1.7.)

57.V.01: *Prompt Disposition of Criminal Cases.* The Plan for Achieving Prompt Disposition of Criminal Cases adopted by Judges for this District can be obtained from the Clerk of Court.

57.VI.01: *Requests for Federal Custody.* If custody of a defendant awaiting trial in this District is requested by another United States Court, the Marshal shall not surrender custody of such defendant unless the United States District Judge to whom the defendant's case has been assigned for trial or other disposition so orders after considering all relevant factors and giving such notice to interested parties as he deems appropriate.

57.VI.02: *Requests for State Custody.* If custody of a defendant awaiting trial in this District is requested by any State authority, the Marshal will only surrender custody of such defendant if he is authorized to do so by the United States District Judge to whom the defendant's case has been assigned for trial or other disposition. In the absence of an emergency request, the authorization shall be requested by the following procedure:

- (A) The wanting State must deliver to the Marshal a specific writ signed by the judge of a court of competent jurisdiction. Such writ shall include an express direction that the defendant will be promptly returned to the Marshal at the wanting State's expense upon conclusion of the matter for which the defendant is sought. A counterpart order signed by a United States District Judge as to whether the State writ will be honored shall be submitted as well.
- (B) The Marshal shall notify both the United States Attorney and the defendant's counsel of the request and allow each a period of three (3) days in which to consent or object. The three (3) day period may be waived.
- (C) The appropriate United States District Judge will determine whether the wanting State's request will be granted, deferred or denied. In so doing, he shall consider the Speedy Trial Act, the Interstate Agreement on Detainers, and any other relevant factors. If said Judge determines to honor the wanting State's request, he shall sign an order so indicating.

57.VII.01: *Filing of Habeas Corpus Actions.* All petitions filed by state, federal, and local prisoners seeking relief under 28 U.S.C. § 2254 or 28 U.S.C. § 2255 shall be filed with the Clerk in compliance with the instructions of the Office of the Clerk of Court and on the appropriate forms or forms substantially similar. The instructions and the appropriate forms can be obtained from the Office of the Clerk of Court without charge.